



February 23, 2000

Ms. Katherine Minter Cary  
Public Information Coordinator  
Office of the Attorney General  
P O Box 12548  
Austin, Texas 78711-2548

OR2000-0659

Dear Ms. Cary

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 132382.

The Office of the Attorney General (the "OAG") received a request for phone records, travel records, employment information, and calendars regarding a particular employee, as well as staff communications regarding the employee's outside employment. You state that you have provided the requestor redacted copies of the travel and personnel records, labeled Exhibit C. You state that the requestor has withdrawn that portion of the request which would encompass the redacted information, so we will not discuss that information. You claim the documents labeled Exhibit B are excepted from required disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Exhibit B consists of two electronic mail messages and two memoranda. One electronic mail message is from the requestor. You say that you have released it to him, with the handwritten notes of an attorney redacted. You are seeking to withhold the other documents in their entirety.

You claim section 552.107 excepts the requested information. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential

communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, basically factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

You state that the internal electronic message dated November 3, 1999, is a privileged communication between a client and his attorney(s). Based on your representation and our review of this document, we conclude that you may withhold that message under section 552.107(1). The memorandum dated November 1, 1999, contains attorney advice and opinion. It also contains factual information. We have marked the information which you may withhold under section 552.107. You must release the remainder of that memorandum. You also seek to withhold a memorandum dated April 16, 1999. That memorandum contains no client communication or attorney advice or opinion, so it is not excepted from disclosure by section 552.107(1). The OAG must release that memorandum.

You represent that the notations on the fourth item in Exhibit B, an electronic message from the requestor dated November 1, 1999, were made in preparation for drafting the memorandum of November 1, 1999. Some of the notations on the message contain attorney advice or opinion. You therefore may withhold under section 552.107 (1) the notations we have bracketed on that electronic mail. The notations we have not bracketed on that piece of electronic mail represent factual answers to questions. You must release these answers. We have marked the documents accordingly.

In summary, you may withhold under section 552.107(1) the introductory paragraph and the paragraph labeled "Statement" in the memorandum of November 1, 1999, but must release the remainder of that memorandum. You may withhold under section 552.107(1) the notations we have bracketed on the electronic message from the requestor, but must release the notations we have not bracketed. You may withhold under section 552.107(1) the electronic message dated November 3, 1999. You must release all of the remaining memorandum. Because in this case, the protection of section 552.111 is coextensive with that of section 552.107, we do not address section 552.111.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

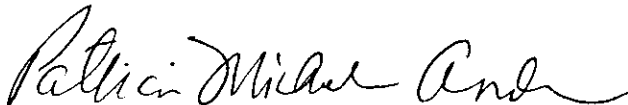
filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Patricia Michels Anderson".

Patricia Michels Anderson  
Assistant Attorney General  
Open Records Division

PMA/jc

Ref: ID# 132382

Encl. Submitted documents

cc: Mr. Robert Bryce  
Austin Chronicle  
P O Box 49066  
Austin, Texas 78765  
(w/o enclosures)